IN THE HIGH COURT OF JUDIATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

LETTERS PATENT APPEAL NO.370 OF 2000

Vishwas Shankarrao Joshi
General Secretary,
Bank of Maharashtra Karmachari
Sangh, a Trade Union registered
under the Trade Union Act, 1926
and having its office at 185,
Shaniwar Peth,
Pune 411 030 .. Appellant.

Versus

Bank of Maharashtra
a Body Corporate constituted under
the Banking Companies (Acquisition
& Transfer of Undertakings) Act,
1970 & having its Head Office at
"Lokmangal", 1501, Shivaji Nagar
Pune 411 005. .. Respondent.

Mr.S.M.Dharap for the appellant.
Mr.A.G.Damle for the respondent.

CORAM : S.B.MHASE &
D.B.BHOSALE, JJ.

DATE : MARCH 23, 2005.

JUDGMENT: (PER D.B.BHOSALE, J.)

1. The question raised in this letters patent appeal is where there is an Award directing reinstatement of a workman is passed by Labour Court, which is being challenged by way of writ petition in High Court, and if such workman has not been employed in any establishment during such period, whether he could be

denied relief under section 17-B of the Industrial Disputes Act, 1947 (for short 'I.D.Act'). In other words, if such a workman files an application seeking relief under section 17-B of the I.D.Act whether High Court is obliged to pass orders in such application directing the employer to make payment as contemplated under this section. This question was raised in view of the observations made by this Court in the order dated 22.11.2000 impugned in the instant letters patent appeal, denying to pass appropriate order under section 17-B, holding that no duty is cast by this section on the High Court to make an order for payment of full wages last drawn by him during pendency of the employer's writ petition against the order of reinstatement.

2. The learned Single Judge rejected the civil application No.4142 of 2000, filed in writ petition No.1303 of 2000, by the impugned order dated 22.11.2000. In the civil application the petitioner had prayed for vacating of the interim order dated 10.3.2000, made by this Court in the writ petition. By that order an implementation of the award dated 12th August, 1999 granting reinstatement in service with backwages in favour

of the appellant was stayed. The order dated 10.3.2000 passed in the writ petition reads thus:

> . "Heard Mr.Damle for the petitioner. He points out that a Special Leave Petition (SLP) to the Supreme Court against the judgment of Andhra Pradesh High Court concerning similar persons engaged in daily deposit collection has been admitted and stay has been granted in favour of the Indian Bank Association in SLP No.5239 of 1998 on 13th July, 1998.
> . That being the position, Rule on the petition. Interim relief in terms of prayer clause (c)".

3. Briefly stated the facts, sans unnecessary details, are as follows: The petitioner was working as a collection agent of the respondent-bank from 1987. Since the bank was not treating him as its employee a dispute was raised and it was referred for adjudication under section 10(1) of the I.D.Act. The bank raised a dispute as to the relationship as employer and employee between them and the petitioner and on that ground challenged the jurisdiction of the Labour Court. The Labour Court by award dated 12.8.1999 held that there exists employer-employee relationship between the petitioner and the respondent-bank and further held that the action of the bank was amounting to retrenchment under section 25F of the I.D.Act. The respondent was, accordingly, directed to reinstate

the appellant with back wages. Despite the award passed by the Labour Court, the appellant was not reinstated. Instead the bank challenged the award of reinstatement in this Court by way of writ petition No.1303 of 2000. The writ petition was admitted and the award was stayed. The appellant, thereafter filed civil application for vacating the interim order dated 10.3.2000 and in the alternative prayed for directions to the respondent-bank to deposit an amount of back wages and relief under section 17-B of the I.D.Act. Civil application was rejected by the impugned order dated 22.11.2000.

4. The learned Single Judge rejected the civil application on two grounds. Firstly, a question as to whether relationship between a collecting agent and the bank, as employer and employee, was then pending in the Apex Court, and secondly, on the ground that under section 17-B of the I.D. Act no duty is cast on this Court or the Supreme Court to make an order for payment of the wages under that section. The relevant observations in the impugned order passed by the learned Single Judge read thus:

. "The Court has, while admitting the

> petition, by order dated 10th March, 2000 given reasons why the petition is being admitted and why the interim relief is being granted. The relationship between the parties thus is dispute. The respondent who has filed this Civil Application was the collecting agent and according to the petitioner, he was being paid commission and no wages. This Court has noted in its order that special leave petition against the judgment of the Andhra Pradesh High Court covering similar points is pending before the Supreme Court. Considering the peculiar controversy raised in the petition and as there is dispute about the relationship between the parties, in my opinion, there is no room to vacate the interim order made by this Court.
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> ... . "Perusal of the provisions of section 17B shows that it creates a statutory right in a workman who has been granted reinstatement in service by the Labour Court to receive wages under that section in case proceedings against the award of reinstatement is pending in the High Court or in the Supreme Court. There is no duty cast by that section on this Court or the Supreme Court to make an order for payment of wages under that section".

5. Mr.Dharap, learned counsel for the appellant at the outset submitted that the provisions of section 17-B provide that the moment an award of the Labour Court directing reinstatement of a workman is passed and if such award is being challenged by the employer in writ petition in High Court, during pendency of such petition the High Court has no option but to grant relief under section 17-B. He further submitted that in the present case, since all the conditions

contemplated in section 17-B stand satisfied it was mandatory to pass an order directing the employer to pay full wages admissible to him pending hearing and final disposal of the writ petition. It was next submitted that in so far as an issue as to the relationship of the employer and employee between the collecting agent and the bank is concerned, that has been settled by the Apex Court in **Indian Bank Association V. Workmen of Syndicate Bank & Ors. JT 2001 (2) SC 542**. In so far as other ground on which the learned Single Judge rejected the application that no duty cast by section 17-B on High Court to make an order for payment of wages under that section is concerned. Mr.Dharap, submitted that the law is well settled that a workman is entitle for last drawn wages from the date of award till the challenge to the award is finally decided in the writ petition. In support of this submission he placed reliance upon the following judgments of the Apex Court in **Regional Authority, Dena Bank and Anr. V. Ghanshyam 2001 II LLJ 274** and in **C.M.Saraiah and E.E.Panchayat Raj Department and Anr. 2000 I L.L.J. SC 39.**

6. On the other hand Mr.Damle, learned counsel for the respondent-bank submitted that in the facts

of the present case the learned Single Judge was right in holding that there is no duty cast by section 17-B on this Court to make order for payment of wages. He submitted that the petitioner was working as a collecting agent and he was receiving commission and even if an amount of commission is treated as last drawn wages, unless it is determined in an appropriate proceedings, no order under section 17-B can be passed. It was next submitted that the only remedy open to the appellant is to get last drawn salary determined by approaching the appropriate forum under section 33-C of the I.D.Act. In short, according to Mr.Damle, the appellant cannot claim any relief under section 17-B since his last drawn salary cannot be quantified by this court in its extremely limited jurisdiction under Article 227 of the Constitution.

7. The question involved in this Letters Patent Appeal, centers around section 17-B of the I.D.Act and, therefore, it would be useful to reproduce this section in order to consider and appreciate the submissions advanced by the learned counsel appearing for the parties better. Section 17-B reads thus:

> "17B. Payment of full wages to workman pending proceedings in higher courts-- Where in any case, a Labour Court, Tribunal or National Tribunal by its award directs reinstatement of any workman and the employer prefers any proceedings against such award in a High Court or the Supreme Court, the employer shall be liable to pay such workman, during the period of pendency of such proceedings in the High Court or the Supreme Court, full wages last drawn by him, inclusive of any maintenance allowance admissible to him under any rule if the workman had not been employed in any establishment during such period and an affidavit by such workman had been filed to that effect in such court.
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> . Provided that where it is proved to the satisfaction of the High Court or the Supreme Court that such workman had been employed and had been receiving adequate remuneration during any such period or part thereof, the court shall order that no wages shall be payable under this section for such period or part, as the case may be".

7.1 Section 17-B provides that where the employer prefers any proceeding against an award directing reinstatement of any workman, the employer shall be liable to pay such workman, during the period of pendency of such proceedings in the High Court or the Supreme Court, full wages last drawn by him inclusive of any maintenance allowance admissible to him under any rule if the workman had not been employed in any establishment during such period and an affidavit by such workman had been filed to that effect in such Court. The

proviso says that if the High Court or the Supreme Court is satisfied that the workman had been employed and had been receiving adequate remuneration during such period or part thereof, the Court shall order that no wages shall be payable under that section for such period or part, as the case may be.

7.2 It is, thus, apparent from the bare perusal of section 17-B that three requirements need to be satisfied for its application. Firstly, there should be award of the Labour Court directing reinstatement of the workman. Secondly, the employer should have preferred proceeding against such award in the High Court and thirdly, that the workman should not have been employed in any establishment during such period. If all the three requirements stand satisfied it is mandatory for the employer to pay such workman, during the period of pendency of such proceedings in the High Court, full wages last drawn by him, inclusive of any maintenance allowance admissible to him under any rule. Section 17-B enacts statutory form of separate and independent right available to a workman during the pendency of the proceedings. Such right is an independent right which comes into

existence after the award. As observed in the case of **Regional Authority, Dena Bank** (supra) it, therefore, follows that in the event of employer not reinstating the workman and not seeking any interim relief in respect of award directing reinstatement of a workman or in the case where the court is not inclined to stay such award in toto, such workman has two options either to initiate proceedings to enforce the award or be content with receiving the full wages last drawn by him without prejudice to the result of the proceedings preferred by the employer against the award till he is reinstated or proceedings are terminated in his favour, whichever is earlier. The Apex Court while dealing with the provisions in section 17-B of the I.D.Act, in Regional Authority, Dena Bank's case (supra) has further observed that this provision does not preclude the High Court under Article 226 of the Constitution from passing appropriate interlocutory orders, having regard to the facts and circumstances of the case in the interest of justice. The relevant observations in paragraph 9 and 11 of the judgment in **Regional Authority, Dena Bank** (supra) read thus:

"9. It may be noticed that section 17-B

> of the Act does not preclude the High Courts or this Court under Articles 226 and 136 of the Constitution respectively from passing appropriate interlocutory orders, having regard to the facts and circumstances of the case, in the interests of justice (Dena Bank's case (supra). The High Court or this Court may, while entertaining, employer's challenge to the award, in its discretion, in appropriate cases, stay the operation of the award in its entirety or in regard to back wages only or in regard to reinstatement without interfering with payment of back wages or on payment of wages in future irrespective of the result of the proceedings before it, etc. and/or impose such conditions as to the payment of the salary as on the date of the order or a part of the back wages and its withdrawal by the workman as it may deem fit in the interests of justice".
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> 11. We have mentioned above that the import of section 17-B admits of no doubt that Parliament intended that the workman should get the last drawn wages from the date of the award till the challenge to the award is finally decided which is in accord with the statement and the objects and reasons of the Industrial Disputes (Amendment) Act, 1982 by which section 17-B does not preclude the High Courts or this Court from granting better benefits - more just and equitable on the facts of a case - than contemplated by that provision to a workman. By interim order the High Court did not grant relief in terms of Section 17-B, may, there is no reference to that section in the orders of the High Court, therefore, in this case the question of payment of "full wages last drawn" to the respondent does not arise. In the light of the above discussion the power of the High Court to pass the impugned order cannot but be upheld so the respondent is entitled to his salary in terms of the said order".

7.3 It is thus clear that the provisions in section 17-B are intended to be invoked in the

course of proceedings in the High Court, which is obliged to make an order as contemplated by section 17-B in the writ petition filed by the employer challenging the order of reinstatement passed by the Labour Court. In other words, the High Court can direct an employer to comply with the provisions of section 17-B of the Act by exercising its jurisdiction under Article 226 of the Constitution of India. As a matter of fact it would be unjust to force the workman to seek remedy else where separately to recover wages permitted to be claimed under section 17-B such as making him to apply under section 33-C (2) of the I.D. Act. I am fortified in the aforesaid view by the decision of the Supreme Court in the case of **C.M.Sariah** (supra) wherein the apex court after having examined the provisions of section 17-B of the I.D.Act, observed that the Court has no jurisdiction to direct non-compliance with the same when the condition precedent for passing an order in terms of section 17-B of the I.D.Act is satisfied and this is the legislative mandate. It is thus clear that the questions raised in the instant appeal is no more res integra and has been addressed by the Apex Court in the aforementioned judgments.

7.4 It may be, thus, noticed that in the event of the employer not reinstating the workman and/or seeking stay to the award directing reinstatement, such workman can exercise his right under section 17-B which comes into existence after the award, provided he has not been employed in any establishment. If such an application is filed by the workman during the period of pendency of such proceedings in High Court, the High Court is not precluded from passing appropriate interlocutory orders, having regard to the facts and circumstances of the case by exercising its jurisdiction under Article 226 of the Constitution of India.

8. Coming to the facts of the present case, it is clear that what influenced the learned Single Judge who denied the relief under section 17-B of the I.D.Act was the pendency of the Special Leave Petition bearing No.5239 of 1998 in the Supreme Court against the judgment of Andhra Pradesh High Court concerning similar persons engaged in daily deposit collection and the stay granted therein in favour of Indian Bank Association, the petitioner therein. The question whether there existed

relationship between collecting agent and a bank as employer and employee and it was pending before the Apex Court. However, that issue has since been settled by the Apex Court in the case of **Indian Bank Association** (supra). The Apex Court in the said case has addressed the question holding that the deposit collectors working on commission basis in banks are workman within the meaning of section 2(s) of the I.D.Act and further that the commission received by the deposit collectors is nothing else but wages within the meaning of section 2(rr) of the I.D.Act, which is depending on the productivity, this commission being paid for promoting the business of the bank. Keeping that in view and considering the well settled position of law we have no hesitation in setting aside the impugned order passed by the learned Single Judge in civil application no.4142 of 2000 preferred in writ petition No.1303 of 2000 dated 22.11.2000.

9. Mr.Damle, learned counsel for the respondent-bank also raised a dispute with regard to quantum of wages drawn by the appellant. He submitted that he was not drawing fixed salary and what bank paid him was only the commission. According to the bank, in the last month he was

paid Rs.564/- only as commission earned by him on the deposits collected by him in December 1995. As against this Mr.Dharap, learned counsel submitted that if an average of the commission paid to the appellant in 1995 is taken into account it would exceed Rs.1500/- per month. It would not be possible and appropriate to go into merits of the respective claims made by the learned counsel appearing for the parties. The fair order in our view would be to direct the employer to pay sum of Rs.1000/- per month from the date of the application filed by the appellant under section 17-B of the I.D.Act. In the circumstances, subject to final orders that would be passed in the writ petition, the respondent-bank shall deposit the arrears within eight weeks from today and shall keep depositing Rs.1000/- per month till hearing and final disposal of the writ petition. Needless to express that the appellant shall have a liberty to withdraw the said amount. The letters patent appeal is, accordingly, disposed of. No costs.

(D.B.BHOSALE, J.) **(S.B.MHASE, J.)**

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